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Ultimate Fighting Championship and UFC

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

20 Cung Le, Nathan Quarry, Jon Fitch, Brandon
Vera, Luis Javier Vazquez, and Kyle
21 Kingsbury on behalf of themselves and all
others similarly situated.

22 Plaintiffs,
23 v.

24 Zuffa, LLC, d/b/a Ultimate Fighting
25 Championship and UFC,

26 || Defendant.

Case No.: 2:15-cv-01045-RFB-(PAL)

**ZUFFA, LLC'S MOTION TO SEAL
PORTIONS OF ZUFFA, LLC'S
OPPOSITION TO PLAINTIFFS'
MOTION TO CHALLENGE
ATTORNEY-CLIENT PRIVILEGE
(ECF NO. 320) AND RELATED
EXHIBITS**

1 Pursuant to the Stipulated Protective Order governing confidentiality of documents
2 entered by the Court on February 10, 2016, ECF No. 217 (“Protective Order”) and Rule 26(c) of
3 the Federal Rules of Civil Procedure, Defendant Zuffa, LLC (“Zuffa”) respectfully requests that
4 the Court order the Clerk of the Court to file under seal Exhibits B and C to the Declaration of
5 Stacey K. Grigsby in Support of Zuffa, LLC’s Opposition to Plaintiff’s Motion to Challenge
6 Attorney-Client Privilege (ECF No. 320) (the “Grigsby Opposition Declaration”), as well as
7 portions of Zuffa’s Opposition to Plaintiffs’ Motion to Challenge Attorney-Client Privilege (ECF
8 No. 320), Exhibit A to the Grigsby Opposition Declaration, and the Appendix of Exhibits in
9 support thereof. This motion is accompanied by the Declaration of Stacey K. Grigsby in Support
10 of Zuffa, LLC’s Motion to Seal Portions of Zuffa, LLC’s Opposition to Plaintiffs’ Motion to
11 Challenge Attorney-Client Privilege (“Grigsby Declaration”).

12 The Protective Order in this case provides for the filing of documents under seal where
13 portions or the entirety of the document contain Confidential or Highly Confidential Information.
14 ECF No. 217, ¶ 14.3. In Zuffa’s opposition and the declaration attached thereto, Zuffa includes
15 two documents (Exhibits B and C to the Grigsby Opposition Declaration) which contain
16 confidential information regarding Zuffa’s decision-making and business strategies and its
17 internal business operations. Because these documents implicate and contain Zuffa’s confidential
18 and privileged information, Zuffa moves to file these exhibits and the portion of Zuffa’s
19 opposition reflecting this confidential information under seal. Zuffa’s opposition also includes
20 references to Plaintiffs’ motion and its exhibits. The exhibits to Plaintiffs’ motion include
21 fourteen documents that contain confidential information regarding Zuffa’s decision-making and
22 business strategies and its internal business operations, as well as attorney-client privileged
23 discussions. In addition, Zuffa moves to seal Exhibit A to the Grigsby Opposition Declaration as
24 portions of that Exhibit contain confidential information regarding Zuffa’s decision-making and
25 business strategies and its internal business operations. Finally, Zuffa moves to seal a portion of
26 the Appendix of Exhibits as the descriptions contain confidential information.

27 Zuffa has moved to seal the documents attached to Plaintiffs’ motion, and incorporates by
28 reference its motion to seal (ECF No. 324) and the arguments contained therein. Because the

1 documents mentioned above implicate and contain Zuffa's confidential and privileged
 2 information, Zuffa moves to file the portion of Zuffa's opposition, declaration, and attached
 3 exhibit, reflecting this confidential and privileged information under seal.

4 Although Zuffa recognizes the importance of access to public documents, the presumption
 5 of public access to court filings may be overcome by a showing of good cause under Rule 26(c)
 6 for sealing requests that do not relate to dispositive motions. *See Pintos v. Pacific Creditors*
 7 *Ass'n*, 605 F.3d 665, 678 (9th Cir. 2010); *Kamakana v. City and County of Honolulu*, 447 F.3d
 8 1172, 1179 (9th Cir. 2006). The Court has "broad latitude" under Rule 26(c) "to prevent
 9 disclosure of materials for many types of information, including, but not limited to, trade secrets
 10 or other confidential research, development, or commercial information." *Phillips v. General*
 11 *Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (citations omitted). In light of the public
 12 interest, Zuffa has narrowly tailored its request by only seeking to seal the Exhibits and the
 13 portions of Plaintiffs' motion with confidential information. Accordingly, the request to seal is
 14 narrowly tailored. A "particularized showing under the good cause standard of Rule 26(c) will
 15 suffice to warrant preserving the secrecy of sealed discovery material attached to non-dispositive
 16 motions." *Kamakana*, 447 F.3d at 1180 (citations and internal quotation marks omitted).

17 As Zuffa argued in its May 13, 2016 motion to seal (ECF No. 257), there is good cause to
 18 seal documents containing confidential business assessments and strategy, information and
 19 communications containing financial terms, incentives and negotiations over contract terms
 20 where such information could cause competitive harm if disclosed publicly. *See Selling Source,*
 21 *LLC v. Red River Ventures, LLC*, No. 2:09-cv-01491-JCM-GWF, 2011 WL 1630338 at *2 (D.
 22 Nev. Apt. 29, 2011) (finding good cause to seal information regarding finances, contractual
 23 agreements and information regarding particular arrangements with customers); *Aevoe Corp. v.*
 24 *AE Tech. Co.*, No. 2:12-cv-00053-GMN-NJK, 2013 WL 2302310, at *2 (D. Nev. May 24, 2013)
 25 (finding good cause to seal financial information and business strategies); *Rainbow Bus. Solutions*
 26 *v. Merch. Servs.*, 2013 U.S. Dist. LEXIS 67190, at *9 (N.D. Cal. May 10, 2013) (finding
 27 compelling reasons to seal "particular information about the party's contractual agreements . . .
 28 the public disclosure of which would impede its ability to negotiate with business partners and to

1 stay competitive in the marketplace"). This good cause is present as to negotiations with athletes
2 and potential and existing sponsors and licensees.

3 If Zuffa's internal business strategies, contracts, or documents reflecting its negotiations
4 over the specific terms or incentives that it offers individual athletes, sponsors, or licensees are
5 publicly disclosed, Zuffa may very well suffer significant competitive harm as a result of
6 competitors gaining unfair insights into Zuffa's finances, agreements, negotiation strategies and
7 its internal business processes. Zuffa takes great care to treat this information as confidential.

8 Zuffa respectfully requests that Exhibits B and C to the Grigsby Opposition Declaration,
9 as well as portions of Zuffa's Opposition to Plaintiffs' Motion to Challenge Attorney-Client
10 Privilege (ECF No. 320), Exhibit A to the Grigsby Opposition Declaration, and the Appendix of
11 Exhibits in support thereof, be permitted to be filed under seal.

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13 Dated: January 3, 2017

BOIES, SCHILLER & FLEXNER LLP

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By: /s/ Stacey K. Grigsby
Stacey K. Grigsby

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10 *Attorneys for Defendant Zuffa, LLC, d/b/a Ultimate*
11 *Fighting Championship and UFC*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing (1) Zuffa's Motion to Seal Portions of Zuffa's Opposition to Plaintiffs' Motion to Challenge Attorney-Client Privilege (ECF No. 320) and Related Exhibits and (2) the Declaration of Stacey K. Grigsby in Support of Zuffa, LLC's Motion to Seal Portions Of Zuffa, LLC's Opposition to Plaintiffs' Motion to Challenge Attorney-Client Privilege (Ecf No. 320) and Related Exhibitwas served on the 3rd day of January, 2017 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list.

/s/ Christina Seki
An Employee of Boies, Schiller & Flexner LLP